

## **Treasurer - Judicial Sales for the Collection of Delinquent Real Estate Taxes**

One of the methods available to collect delinquent real estate taxes under the Code of Virginia is the judicial sale process, also referred to as a bill in equity, where delinquent real estate parcels and improvements are sold. The purpose of this page is to provide education about the judicial sale process and dispel certain misconceptions about the process.

### **When does a property become eligible for judicial sale?**

Virginia law specifically governs the judicial sale process (Article 4 of Chapter 39, Title 58.1 of the Code of Virginia, Code Sections 58.1-3965 et. seq.). Tax parcels are eligible for judicial sale in most cases when "any taxes on [such] real estate are delinquent on December 31 following the second anniversary of the date on which such taxes become due."

### **What are the general steps of the judicial sale process?**

Depending on the property, the judicial sale process can take several months to approximately 18 months. The owner of the property can redeem the property at any time during the process prior to the sale by paying all taxes, penalties, interest and costs. Generally, before a property can be sold, the following steps are completed:

- At least 30 days prior to any action, a notice must be sent to the last known address of each property owner and in some circumstances, to the address of the property itself.
- At least 30 days prior to filing a suit in Circuit Court, a list of properties planned for judicial sale must be published at least once by newspaper. (At a later date, another notice is published in the newspaper announcing the public sale of the property.)
- Suit is filed in the Circuit Court against the owners to have the property sold at a judicial sale.
- Once the Court determines that the sale is warranted, a special commissioner of sale is appointed by the Circuit Court.
- The special commissioner of sale, at their discretion, may obtain offers through a private bid, through a public auction or list the property with a real estate agent.
- Once the special commissioner of sale has completed the bid process, reports are filed and a hearing is scheduled with the Circuit Court to ask the Court to approve the offer.
- If the sale is confirmed by the Circuit Court, the Court directs the special commissioner of sale to complete the sale by collecting the purchase price, preparing and executing the deed and by preparing a report accounting for all sale proceeds and disbursements.
- The special commissioner then distributes the proceeds in order of priority, as approved by the Court, and makes a final accounting to the Court. The proceeds are distributed as follows in order of priority:

1. Costs of the suit, including attorney's fees

2. Payment of all delinquent real estate taxes and pro rata share of current taxes
3. Payment to any lien creditors (e.g. mortgage creditors, judgment lien creditors, state or federal tax liens) in their order of priority as determined by law
4. Any remaining proceeds are paid to the owners of the property. If owners cannot be located or identified, the Court can direct the remaining proceeds belonging to such absent owner be paid over to and held by the Clerk of the Circuit Court.

## **Judicial Sale Misconceptions**

**Misconception #1: A purchaser can obtain ownership of real estate by paying off the delinquent taxes.**

**Incorrect:** Current Virginia law provides no process by which a buyer can obtain any "tax certificate", "tax deed" or other title to real estate by paying off the delinquent taxes owed on the property. Please see above for the legally-required procedures for sale of real property with delinquent taxes.

**Misconception #2: A purchaser can expect to buy real estate through a judicial sale for a small fraction of its actual value.**

**False:** Under Virginia law, the Circuit Court is required to ensure that any sale is conducted so as to ensure that the property is sold for a fair and reasonable price. Accordingly, the law requires the Court to determine the fair market value of the property based upon expert evidence. Further, the law requires the Court to reject any bid that falls so far below the market value of the property as to "shock the conscience of the Court." The Treasurer reserves the right to reject any bid that does not cover all taxes due and costs of the sale.

**Misconception #3: An advertisement in the local newspaper entitled "Notice of Judicial Sale of Real Property" announces the sale of certain properties.**

**Read carefully:** As noted above, the law requires an initial advertisement before judicial sale proceedings are commenced and is not intended to list or advertise the properties as being for sale. Rather, this notice is intended to provide a notice to the owners of the listed properties of the Treasurer's intention to commence judicial sale proceedings and to encourage these owners to redeem the properties. In reality, most properties listed in these initial newspaper advertisements are never sold because the owner or lien holder (e.g. a bank or mortgage company) redeems the property before the sale. Typically, attorneys will list another advertisement in the newspaper announcing the sale, by public auction on the steps of the County Courthouse or other suitable location.

## **Still have an interest**

If you are interested in purchasing land and improvements through the judicial sale process, please note that there are significant risks involved. Properties are offered for sale as-is, with all faults and **without any warranty** either express or implied. Prospective buyers are strongly encouraged to complete an investigation and inspection of the

property and a title search prior to the sale. Any costs incurred by bidder to investigate and inspect the property are at the expense of the bidder and are non-refundable. It should be noted that generally, neither the Treasurer, nor the attorneys representing the County, have the authority to grant access to the property for the purposes of a physical inspection. Any costs of title search and all recording costs, including grantor's tax, will be at the expense of the purchaser. Properties will be conveyed by Deed with Special Warranty of Title. No warranty is made as to the insurability of the title. Buy at your own risk. Please ensure you understand the payment provisions for each sale. Minimum deposits based upon a percentage of the bid price may be required on the sale date with the remaining balance due within a specified time frame.

### **Judicial Sale Attorney for James City County**

Currently, James City County refers all qualified properties to the following attorney to commence the judicial sale process and sell the properties if necessary to satisfy delinquent real estate taxes, penalties and interest:

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